

PTO Form 1960 (Rev 9/2007)

OMB No. xxxx-xxxx (Exp. x/xxxx)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77027304
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION (no change)	
ARGUMENT(S)	
<p><u>Section 2(e)(4) Refusal - Mark Primarily a Surname</u></p> <p>The Examiner has issued a surname refusal, concluding solely that the word BLOSSMAN is primarily merely a surname. Applicant respectfully submits that BLOSSMAN is not primarily merely a surname.</p> <p>The PTO has the burden of establishing a prima facie case that BLOSSMAN is primarily merely a surname. <i>See In re Kahan & Weisz Jewelry Mfg. Corp.</i>, 508 F.2d 831 (C.C.P.A. 1975), and <i>In re Benthin Management GmbH</i>, 37 U.S.P.Q.2d 1332 (1995).</p> <p>To determine whether a mark is primarily a surname, the test is whether customers perceive the mark only as a surname and as nothing other than a surname. <i>In re Kahan</i>, 508 F.2d at 832. <i>See also Ex Parte River Watch Corp.</i>, 106 U.S.P.Q. 145 (Comm'r Pat. 1955); <i>In re Allied Mills, Inc.</i>, 150 U.S.P.Q. 757 (T.T.A.B. 1966); <i>In re Mangel Stores Corp.</i>, 165 U.S.P.Q. 22 (T.T.A.B. 1970); <i>Blanchard & Co. v. Charles Gilman & Son, Inc.</i>, 239 F. Supp. 827, 145 U.S.P.Q. 62 (D. Mass. 1965), <i>aff'd</i>, 353 F.2d 400, 147 U.S.P.Q. 263 (1st Cir. 1965), <i>cert. denied</i>, 383 U.S. 968, 16 L. Ed. 2d 308, 86 S. Ct. 1273, 149 U.S.P.Q. 905 (1966); and J. Thomas McCarthy, <i>MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION</i> § 13:29, 4th Ed., (2005).</p> <p>The fact that a mark is a rare surname weighs against a finding that the term would be perceived as primarily merely a surname. <i>In re Sava Research Corp.</i>, 32 U.S.P.Q.2d 1380 (T.T.A.B. 1994). The Office Action's evaluation of the rareness criterion is limited to the citation of a listing of over 55 BLOSSMANs in a directory of names. And most of the people with the name, BLOSSMAN, located by the Office are in Louisiana and are relatives of Applicant. Applicant submits that the presence of 55 Blossmans in the U.S. out of a population of 301,139,947 is, in fact, evidence of rareness. (<i>See</i> https://www.cia.gov/library/publications/the-world-factbook/print/us.html, and page 3 of accompanying print-out from Web site providing estimate of U.S. population as of July of 2007, Exhibit A).</p> <p>The court in <i>In re Kahan</i> found that six DUCHARME listings in the New York City telephone directory do not establish that the primary significance of the mark to the public is that of a surname.</p>	

In re Kahan, 508 F.2d at 832. Furthermore, the Court of Customs and Patent Appeals has required that the number of telephone listings be "unusually large" in order to support a surname rejection. In In re Harris-Intertype Corp., 518 F.2d 629 (C.C.P.A. 1975), the court determined that HARRIS was primarily merely a surname after finding 1,100 listings of the name in the applicant's home city and 800 listings in Washington, D.C. The Court found the number of listings "unusually large." In stark contrast, the number of BLOSSMANs is only 55, which is only 5% of the number deemed "unusually large" by the Harris-Intertype court. Applicant also submits that the Office only located 396 mentions of Blossman out of the millions of news articles and resources on Lexis, again supporting the argument that the Blossman is a rare surname.

Finally, if a mark does not include elements such as initials or a first name, the mark is less likely to be considered a surname. See In re Taverniti, SARL, 225 U.S.P.Q. 1263 (T.T.A.B. 1985). The same is true of courtesy prefixes such as Mr., Miss., Mlle., etc. See In re Revillon, 154 U.S.P.Q. 494 (T.T.A.B. 1967). Since the present mark does not include initials, a first name, a courtesy prefix, or any other element that may denote surname significance, it is less likely to be considered a surname.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)

ORIGINAL
PDF FILE

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SIGNATURE SECTION

RESPONSE SIGNATURE

/melissalabaue/

SIGNATORY'S NAME

Melissa LaBauve

SIGNATORY'S POSITION

Attorney of record

DATE SIGNED

11/29/2007

AUTHORIZED SIGNATORY

YES

CONCURRENT APPEAL NOTICE FILED

YES

FILING INFORMATION SECTION

SUBMIT DATE

Thu Nov 29 15:07:13 EST 2007

TEAS STAMP

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PTO Form 1980 (Rev 9/2007)

OMB No. xxx-xxxx (Exp. x/xxxx)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. 77027304 has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Section 2(e)(4) Refusal - Mark Primarily a Surname

The Examiner has issued a surname refusal, concluding solely that the word BLOSSMAN is primarily merely a surname. Applicant respectfully submits that BLOSSMAN is not primarily merely a surname.

The PTO has the burden of establishing a prima facie case that BLOSSMAN is primarily merely a surname. See In re Kahan & Weisz Jewelry Mfg. Corp., 508 F.2d 831 (C.C.P.A. 1975), and In re Benthin Management GmbH, 37 U.S.P.Q.2d 1332 (1995).

To determine whether a mark is primarily a surname, the test is whether customers perceive the mark only as a surname and as nothing other than a surname. In re Kahan, 508 F.2d at 832. See also Ex Parte River Watch Corp., 106 U.S.P.Q. 145 (Comm'r Pat. 1955); In re Allied Mills, Inc., 150 U.S.P.Q. 757 (T.T.A.B. 1966); In re Mangel Stores Corp., 165 U.S.P.Q. 22 (T.T.A.B. 1970); Blanchard & Co. v. Charles Gilman & Son, Inc., 239 F. Supp. 827, 145 U.S.P.Q. 62 (D. Mass. 1965), *aff'd*, 353 F.2d 400, 147 U.S.P.Q. 263 (1st Cir. 1965), *cert. denied*, 383 U.S. 968, 16 L. Ed. 2d 308, 86 S. Ct. 1273, 149 U.S.P.Q. 905 (1966); and J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 13:29, 4th Ed., (2005).

The fact that a mark is a rare surname weighs against a finding that the term would be perceived as primarily merely a surname. In re Sava Research Corp., 32 U.S.P.Q.2d 1380 (T.T.A.B. 1994). The Office Action's evaluation of the rareness criterion is limited to the citation of a listing of over 55 BLOSSMANs in a directory of names. And most of the people with the name, BLOSSMAN, located by the Office are in Louisiana and are relatives of Applicant. Applicant submits that the presence of 55 Blossmans in the U.S. out of a population of 301,139,947 is, in fact, evidence of rareness. (See <https://www.cia.gov/library/publications/the-world-factbook/print/us.html>, and page 3 of accompanying print-out from Web site providing estimate of U.S. population as of July of 2007, Exhibit A).

The court in In re Kahan found that six DUCHARME listings in the New York City telephone directory do not establish that the primary significance of the mark to the public is that of a surname. In re Kahan, 508 F.2d at 832. Furthermore, the Court of Customs and Patent Appeals has required that the number of telephone listings be "unusually large" in order to support a surname rejection. In In re

Harris-Intertype Corp., 518 F.2d 629 (C.C.P.A. 1975), the court determined that HARRIS was primarily merely a surname after finding 1,100 listings of the name in the applicant's home city and 800 listings in Washington, D.C. The Court found the number of listings "unusually large." In stark contrast, the number of BLOSSMANs is only 55, which is only 5% of the number deemed "unusually large" by the Harris-Intertype court. Applicant also submits that the Office only located 396 mentions of Blossman out of the millions of news articles and resources on Lexis, again supporting the argument that the Blossman is a rare surname.

Finally, if a mark does not include elements such as initials or a first name, the mark is less likely to be considered a surname. See In re Taverniti, SARL, 225 U.S.P.Q. 1263 (T.T.A.B. 1985). The same is true of courtesy prefixes such as Mr., Miss., Mlle., etc. See In re Revillon, 154 U.S.P.Q. 494 (T.T.A.B. 1967). Since the present mark does not include initials, a first name, a courtesy prefix, or any other element that may denote surname significance, it is less likely to be considered a surname.

EVIDENCE

Original PDF file:

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Converted PDF file(s) (3 pages)

Evidence-1

Evidence-2

Evidence-3

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /melissalabauve/ Date: 11/29/2007

Signatory's Name: Melissa LaBauve

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77027304

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TEAS Stamp: USPTO/RFR-66.237.153.98-2007112915071381

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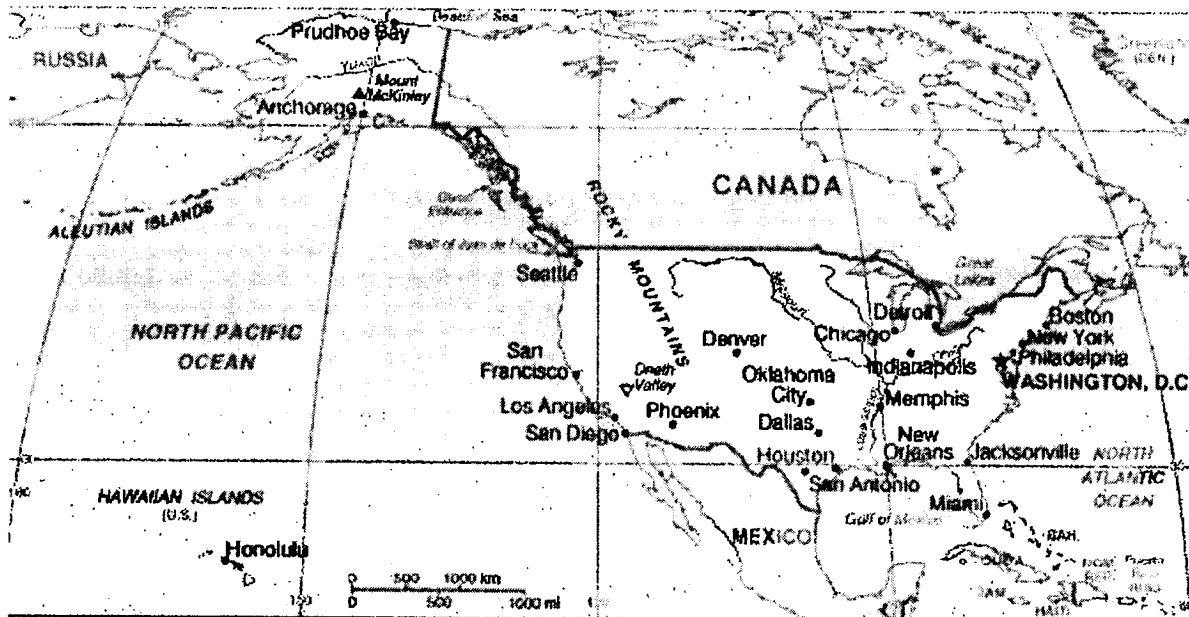
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The World Factbook



United States



Introduction United States

Background: Britain's American colonies broke with the mother country in 1776 and were recognized as the new nation of the United States of America following the Treaty of Paris in 1783. During the 19th and 20th centuries, 37 new states were added to the original 13 as the nation expanded across the North American continent and acquired a number of overseas possessions. The two most traumatic experiences in the nation's history were the Civil War (1861-65) and the Great Depression of the 1930s. Buoyed by victories in World Wars I and II and the end of the Cold War in 1991, the US remains the world's most powerful nation state. The economy is marked by steady growth, low unemployment and inflation, and rapid advances in technology.

Geography United States

Location: North America, bordering both the North Atlantic Ocean and the North Pacific Ocean, between Canada and Mexico

Geographic coordinates: 38 00 N, 97 00 W

Map references: North America

- Area:** *total:* 9,826,630 sq km
land: 9,161,923 sq km
water: 664,707 sq km
note: includes only the 50 states and District of Columbia
- Area - comparative:** about half the size of Russia; about three-tenths the size of Africa; about half the size of South America (or slightly larger than Brazil); slightly larger than China; more than twice the size of the European Union
- Land boundaries:** *total:* 12,034 km
border countries: Canada 8,893 km (including 2,477 km with Alaska), Mexico 3,141 km
note: US Naval Base at Guantanamo Bay, Cuba is leased by the US and is part of Cuba; the base boundary is 28 km
- Coastline:** 19,924 km
- Maritime claims:** *territorial sea:* 12 nm
contiguous zone: 24 nm
exclusive economic zone: 200 nm
continental shelf: not specified
- Climate:** mostly temperate, but tropical in Hawaii and Florida, arctic in Alaska, semiarid in the great plains west of the Mississippi River, and arid in the Great Basin of the southwest; low winter temperatures in the northwest are ameliorated occasionally in January and February by warm chinook winds from the eastern slopes of the Rocky Mountains
- Terrain:** vast central plain, mountains in west, hills and low mountains in east; rugged mountains and broad river valleys in Alaska; rugged, volcanic topography in Hawaii
- Elevation extremes:** *lowest point:* Death Valley -86 m
highest point: Mount McKinley 6,194 m
- Natural resources:** coal, copper, lead, molybdenum, phosphates, uranium, bauxite, gold, iron, mercury, nickel, potash, silver, tungsten, zinc, petroleum, natural gas, timber
- Land use:** *arable land:* 18.01%
permanent crops: 0.21%
other: 81.78% (2005)
- Irrigated land:** 223,850 sq km (2003)
- Natural hazards:** tsunamis, volcanoes, and earthquake activity around Pacific Basin; hurricanes along the Atlantic and Gulf of Mexico coasts; tornadoes in the midwest and southeast; mud slides in California; forest fires in the west; flooding; permafrost in northern Alaska, a major impediment to development
- Environment - current issues:** air pollution resulting in acid rain in both the US and Canada; the US is the largest single emitter of carbon dioxide from the burning of fossil fuels; water pollution from runoff of pesticides and fertilizers; limited

natural fresh water resources in much of the western part of the country require careful management; desertification

Environment - international agreements: *party to:* Air Pollution, Air Pollution-Nitrogen Oxides, Antarctic-Environmental Protocol, Antarctic-Marine Living Resources, Antarctic Seals, Antarctic Treaty, Climate Change, Desertification, Endangered Species, Environmental Modification, Marine Dumping, Marine Life Conservation, Ozone Layer Protection, Ship Pollution, Tropical Timber 83, Tropical Timber 94, Wetlands, Whaling
signed, but not ratified: Air Pollution-Persistent Organic Pollutants, Air Pollution-Volatile Organic Compounds, Biodiversity, Climate Change-Kyoto Protocol, Hazardous Wastes

Geography - note: world's third-largest country by size (after Russia and Canada) and by population (after China and India); Mt. McKinley is highest point in North America and Death Valley the lowest point on the continent

People **United States**

Population: 301,139,947 (July 2007 est.)

Age structure: *0-14 years:* 20.2% (male 31,152,050/female 29,777,438)
15-64 years: 67.2% (male 100,995,752/female 101,365,035)
65 years and over: 12.6% (male 15,858,477/female 21,991,195) (2007 est.)

Median age: *total:* 36.6 years
male: 35.3 years
female: 37.9 years (2007 est.)

Population growth rate: 0.894% (2007 est.)

Birth rate: 14.16 births/1,000 population (2007 est.)

Death rate: 8.26 deaths/1,000 population (2007 est.)

Net migration rate: 3.05 migrant(s)/1,000 population (2007 est.)

Sex ratio: *at birth:* 1.05 male(s)/female
under 15 years: 1.046 male(s)/female
15-64 years: 0.996 male(s)/female
65 years and over: 0.721 male(s)/female
total population: 0.967 male(s)/female (2007 est.)

Infant mortality rate: *total:* 6.37 deaths/1,000 live births
male: 7.02 deaths/1,000 live births
female: 5.68 deaths/1,000 live births (2007 est.)

Life expectancy at birth: *total population:* 78 years
male: 75.15 years
female: 80.97 years (2007 est.)

Total fertility 2.09 children born/woman (2007 est.)